REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SOLID-ONE MILLS, PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8559

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 07 2016
11:26 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For this Court's resolution is petitioner's **Motion for Reconsideration (Re: Decision dated 21 June 2016)**, filed on July 12, 2016, with respondent's **Comment and/or Opposition**, filed on August 1, 2016.

Petitioner seeks reconsideration of the Court's Decision[1] dated June 21, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"[2]

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[1] Docket, Vol. 2, pp. 561-574.
[2] Docket, Vol. 2, p. 573.

In the assailed Decision, the Court ruled that it has no jurisdiction over the present case considering that petitioner failed to file its appeal with the Court within the thirty (30)-day period from receipt of the denial of its administrative protest. The Court found that petitioner received the denial of its protest on March 16, 2012, and thus, it had until April 15, 2012 within which to file its appeal. The Petition for Review was filed only on October 18, 2012.

Petitioner argues that the ends of justice would be met if the case will be decided on its merits. It alleges that partial payments were proven and to allow respondent to receive payment for what was already paid is to doubly tax a citizen constituting unjust enrichment on the part of the State. Petitioner also avers that the assessment has prescribed under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended. Likewise, it contends that the case was fully litigated.

According to petitioner, the interest of substantial justice allows the Court to overlook late filing on appeals on meritorious grounds. Further, it submits that respondent never questioned the timeliness of the appeal and that the issue on jurisdiction was not one of the limited issues in their Joint Stipulation of Facts and Issues. Lastly, petitioner contends that due to respondent's actions, the Demand Letter dated September 17, 2012 may be deemed the reckoning date for the appeal.

Respondent opposes petitioner's arguments and maintains that the latter's failure to submit all supporting documents in connection with its request for reinvestigation within sixty (60) days from filing of its protest rendered the assessment final and executory. The Court has no jurisdiction to rule on any matter concerning the case considering that the assessment has become final and executory.

Petitioner's Motion for Reconsideration lacks merit.

Relevant to the present case is Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of Revenue Regulations No. 12-99[3], the pertinent portions of which read:

"SEC. 228. *Protesting of Assessment.* –

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[3] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**" (*Emphasis ours*)

"3.1.5 *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

> **If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.** xxx" (*Emphasis ours*)

The present case involves an assessment which has become final, executory and demandable. In the assailed Decision, the Court found that petitioner failed to file its appeal before this Court within the thirty (30)-day period from receipt of the denial of its administrative protest.

The records show that petitioner received the denial of its protest on March 16, 2012.[4] Therefore, it had until April 15, 2012 within which to file its appeal before the Court of Tax Appeals. However, petitioner filed the Petition for Review only on October 18, 2012. The assessment against petitioner has become final, executory and demandable. Thus, the Court has no jurisdiction over the instant case.

A tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail it can no longer be contested.[5]

The fact that an assessment has become final for failure of the taxpayer to file its appeal with the Court within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. An assessment that has become final, executory and demandable is not within the jurisdiction of this Court, said jurisdiction being limited to decisions or inaction by the Commissioner Internal Revenue in cases involving disputed assessments.

Contrary to petitioner's argument, the Court cannot decide a case on the merits if it has no jurisdiction over it. In fact, in the case of *Sheryl M. Mendez vs. Shari'a District Court, 5th Shari'a District, Cotabato City, et al.*[6], the Supreme Court held that "in order for the Court to have authority to dispose of a case on the merits, it must acquire jurisdiction over the subject matter and the parties."

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[4] Exhibit "P-16", Docket, Vol. 1, p. 334; Par. 7, Petition for Review, Docket, Vol. 1, p. 8.
[5] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.*, G.R. NO. 148380, December 9, 2005.
[6] G.R. No. 201614, January 12, 2016.

Furthermore, in the case of *Miramar Fish Company, Inc. vs. Commissioner of Internal Revenue*[7], the Supreme Court made it clear that "jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits."

Since the Court has no jurisdiction over the instant case, it cannot rule upon the other issues raised by petitioner regarding the subject assessment. Thus, finding no cogent reason to reverse the ruling in the assailed Decision, the dismissal of the Petition for Review for lack of jurisdiction was proper.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[7] G.R. No. 185432, June 4, 2014.